

premises are subject to the Control of Rent Ordinance. **A CIVIL SUIT.**

And I order the plaintiffs to pay the defendants the costs of this action, to be taxed on the higher scale.

Claim dismissed.

Solicitors: *Chung & Co.; Donaldson & Burkinshaw.*

TAN LIAN CHYE v. MALAYAN RAILWAY ADMINISTRATION

[O.C.J. (Winslow J.) August 17, 1967]

[Singapore — Suit No. 444 of 1966]

Tort — Negligence — Child run over on railway line — Whether licensee or trespasser — Duty of care and protection — Whether steps taken to warn all concerned of dangers — Habitual and knowing acquiescence — Failure to establish negligence.

The plaintiff an 8 year old boy was run over on the railway line in Singapore by a train under the control and management of the driver and guard employed by the defendants. The plaintiff suffered severe injuries to his left leg which was badly crushed and had to be amputated above the knee. In this action the plaintiff sued the defendants (by his mother and next friend) for damages for personal injuries caused by the negligence of the defendants or their servants or agents. The defendants admitted the accident but denied that it was caused solely by their own negligence or that of their servants or agents. They claimed that the accident was caused solely or alternatively contributed to by the negligence of the plaintiff. The defendants also alleged that the cause of action did not arise within the 12 months next before the date of issue of the writ and was barred by the Public Authorities Protection Ordinance, 1948 which was extended to Singapore by the Modification of Laws (Government Proceedings and Public Authorities Protection) (Extension and Modification) Order, 1965.

In an action for damages by his mother and next friend against the defendants:—

Held: the plaintiff was, in the circumstances, a trespasser and went on to the railway siding without permission, and that the defendants owed him no duty to protect him from injury. Claim dismissed.

Cases referred to:—

- (1) *Gajadhar v. Seth Neghraj* A.I.R. 1930 Nagpur 8.
- (2) *Narainrao v. Seth Hanumantram* A.I.R. 1930 Nagpur 275.
- (3) *S. Sircar v. Abdool Hakeem* (1880), I.L.R. 5 Calcutta 602.
- (4) *Wong See Leng v. C. Saraswathy Ammal* [1954] M.L.J. 141.
- (5) *Gough v. National Coal Board* [1954] 1 Q.B. 191.
- (6) *Mourton v. Poulter* [1930] 2 K.B. 183.
- (7) *Addie & Sons Ltd. v. Dubbreck* [1929] A.C. 358 at p. 372.
- (8) *Hardy v. Central London Railway Co.* [1920] 3 K.B. 459.

K.C. Chan for the plaintiff.

P.J. Mooney for the defendants.

Cur. Adv. Vult.

Winslow J.: In this action the infant plaintiff sues the defendants (by his mother and next friend) for damages for personal injuries suffered by him on 6th December, 1960 and alleged to have been caused by the negligence of the defendants or their servants or agents. He claims that he was run over on the railway line near the premises of Archipelago Brewery Limited, Singapore by a train under the control and management of the driver and the guard employed by the defendants.

The plaintiff, unfortunately, suffered severe injuries to his left leg which was badly crushed and had to be amputated above the knee. Damages have been agreed in the sum of \$27,000.

Particulars of the defendants' negligence are set out as follows:—

- (a) failing to fence up the railway siding;
- (b) failing to keep any or proper look out;
- (c) failing to observe the presence of children in particular the plaintiff near the train while shunting;
- (d) failing to take special care in preventing children in particular the plaintiff from going near the train which is an allurement to children;
- (e) failing to stop, slow down or swerve or in any way so to manage or control the train so as to avoid running over the plaintiff.

The defendants admit the accident but deny that it was caused solely by their own negligence or that of their servants or agents. They claim that the accident was caused solely, or alternatively, contributed to by the negligence of the plaintiff.

Particulars of the plaintiff's negligence are set out as follows:—

- (a) Coming on to the railway siding without permission;
- (b) Ignoring a warning and order to keep away from the train;
- (c) Jumping or attempting to jump onto or clinging or attempting to cling to the train after it started to move.

A further line of defence is that the alleged cause of action did not arise within the twelve months next before the date of issue of the writ herein and is barred by the Public Authorities Protection Ordinance, 1948 which was extended to Singapore by the Modification of Laws (Government Proceedings & Public Authorities Protection) (Extension and Modification) Order 1965.

I now turn to a consideration of the evidence adduced on both sides and my findings thereon are as follows —

- (a) the infant plaintiff, who was, at the time of the accident, 8 years old, stated that he was playing marbles with some children under a tree adjoining a block of S.I.T. flats in the vicinity of some railway tracks, used by goods trains for shunting, not very far from the Archipelago Brewery which is situated on the other side of these tracks. These tracks, in the vicinity of the flats, consist of a loop siding nearer the flats and a main siding running more or less parallel to it on the other side of it nearer Alexandra Road. A sketch plan produced by the defendants (Exh. D2) shows the topography of the scene in question which can also be seen quite clearly in photographs submitted on behalf of the plaintiff (Exh. P1 and P4);
- (b) the plaintiff said that he aimed his marble at another marble during the course of a game he was playing with the other children and that the marble hit the ground, bounced off it and shot like an arrow eventually landing on the loop siding. He went down to look for it and squatted down on this track with his back to some stationary "coaches" behind which was a stationary engine facing the other way. As he was looking for his marble, he heard a metallic sound and discovered that the goods train was reversing. As he rose to run away, he tripped and fell with his left leg across the line and the train ran over his leg. He shouted and lost consciousness;
- (c) he called a witness of about his own age with whom he had been playing marbles that day (P.W.4) to support his story. The latter, however, was a most unconvincing witness who did not seem to be at all sure about any of his facts. For instance, he claimed that it was his marble which struck the plaintiff's marble as a result of which the latter rolled down to the track. He moreover said he did not hear any sound from the engine and did not know whether it was on. The plaintiff, on the other hand, had said that the "sound of the engine was on" all the time and that immediately before the accident, he heard a metallic sound. P.W.4 was also completely confused about the engine which, at one stage, he claimed had detached itself and moved away. Later, he claimed that he never saw it detach itself on the day of the accident. I can place little or no reliance on his evidence;
- (d) the plaintiff denied being warned not to "play" around there before. He also said that he had never seen boys hanging on to the handles of doors of wagons and denied that he had ever hung on to any wagon before or on that day. He also denied that the accident took place on the main siding. His witness (P.W.4), however, claimed that he had never been chased away before because he never went on to the tracks when there were trains there but he agreed that there would have been trouble from the railway people if they had played there when the trains were there. He also admitted that if he had gone to the track when the train was there, they would have been chased away;
- (e) the plaintiff also called a shipping clerk (P.W.5), who had been a resident in the area for some years, as his witness. This witness claimed that he used to cross the tracks from the direction of the flats by means of a foot-path leading to a bus stop in Alexandra Road on the other side of the tracks but he admitted that he only did so when there were no trains there at all, or if they were stationary;
- (f) the defence, on the other hand, called the driver of the engine in question (D.W.1) and its brakesman (D.W.2) to give evidence of what really occurred that day;
- (g) their version, which I accept, was as follows. The engine in question, which was pulling some 18 wagons or so, arrived from the direction of the Singapore Railway station and, after passing the Archipelago Brewery, came to a stop on the main siding. Whilst there he saw some boys under the tree shown in Exh. P1. The engine was then detached from the wagons and moved forward by itself and went past the point, where the main siding and the loop siding meet, as shown on the sketch plan (Exh. D2) and marked "point No. 5" thereon. The engine then reversed down the loop siding until it came to its junction with the main siding again. It then moved forward up the main siding and connected up with the wagons it had previously left behind on the main siding. It was, accordingly, to the rear of the wagons and not in front as it originally had been. It then pushed the wagons to Diethelm's factory to the right of Exh. D2 where it picked up a further wagon and started, in the opposite direction, pulling all the wagons along the main siding in the direction of the Singapore Railway station. The engine was then travelling at "walking pace" with a view to stopping at the lower junction of the two sidings nearer the Brewery;
- (h) the boys, who had previously been seen under the tree, started coming on to the track, for the second time, on the final journey of the engine and the wagons from

the direction of Diethelm's factory along the main siding towards the Brewery. The guard was walking between the tracks chasing the boys away. On this return journey the accident took place. The driver happened to look back and saw some boys hanging on to the wagons — some to the handles and some to the bars. He also saw one boy on the ground. He stopped the engine after he saw this but it took him about 20 seconds to stop the engine during which time he travelled one wagon's length. He saw the boy on the ground with his leg across the rail. It had been "cut". The driver presumed, as he stated later in his report (Exh. P7), that the boy had fallen off the wagon after hanging on to it;

- (i) the driver gave his evidence in a very fair and convincing manner and I see no reason why I should not accept his evidence;
- (j) the brakesman (D.W.2) said that the boys came running to the track and climbed on to the wagon after the train stopped at the main siding. He said that this happened at a point about 3 or 4 wagons from the brake van which was the last wagon of the train. He claimed that he took a stick to chase them and warned them in unmistakable bazaar Malay that they should not board the train. He also said that the guard helped him to chase them away;
- (k) the driver confirmed the brakesman's story that the boys did come down at that stage and were chased away by the guard and the brakesman. It is clear from the evidence that the driver could take no effective part himself in driving the boys away from the train because, obviously, his duties involved concentration on the engine and what went on in front of him. It is perhaps fortunate that he happened to look back at the time he did when he saw some boys hanging on the 6th or 7th wagon from the front. Otherwise there might have been more casualties. It seems to me that the boys, after being chased away from the wagons, came back again and tried to hang on to the wagons nearer the front despite being warned of the dire consequences, which might follow, by the guard and the brakesman. They probably chose an opportune moment when the guard and the brakesman were probably looking somewhere else — perhaps chasing some other boys away — to seize the opportunity of climbing on to the wagons in the short interval which preceded this unfortunate tragedy;
- (l) I have no hesitation in finding that no wagons ever used the loop siding and that the accident took place on the main

siding on the train's return journey from Diethelm's factory. Counsel for the plaintiff agreed, in his final address, that this must be so and sought to use the defendants' version to support the plaintiff's claim;

- (m) I also find that presence of the boys on the tracks was never tolerated or permitted by the defendants and that, far from acquiescing in their presence, they took measures to chase them away everytime they appeared thereon and had repeatedly warned them, in unmistakable terms, that severe consequences would follow if they persisted in their antics. In my opinion, short of fencing the area, they did all they could have done to make their warnings and objections clearly understood.

Having found the facts, it now remains for me to deal with the law on the subject of the legal liability (if any) of persons standing in the shoes of the defendants, their servants or agents, towards children like the plaintiff for injuries sustained on the defendants' land.

Counsel for the plaintiff maintained that the plaintiff could rely on the facts proved by the defendants (and accepted by the court) to establish his claim in negligence even if his own version of the facts had been rejected. Counsel for the defendant s submitted that, if the plaintiff's story was rejected, his claim should be dismissed. I have, in fact, rejected it.

The following cases were cited on the issue of the extent to which reliance could be placed on the defendants' version to support the plaintiff's claim: *Gajadhar v. Seth Meghraj*,⁽¹⁾ *Narainrao v. Seth Hanumantram*,⁽²⁾ *S. Sircar v. Abdool Hakeem*,⁽³⁾ and *Wong See Leng v. C. Saraswathy Ammal*.⁽⁴⁾

The first two cases are authorities for the proposition that a plaintiff, who fails to prove all the facts alleged by him, may yet obtain the whole or any part of the relief claimed by him if the facts pleaded by the defendant and found by the court, show him to be entitled thereto.

In the third case it was held that, after parties have come to trial to determine which of two stories is true, the plaintiff cannot be allowed to amend his plaint by abandoning his own story, and adopting that of the defendant, and asking relief on that footing: for the question, whether on that footing the plaintiff is entitled to relief, is one to which the defendant's attention has not been called, and as to which he has had no opportunity of answering.

In the fourth case (a Federation Court of Appeal decision) Murray-Aynsley C.J. (S) reasoned as follows:—

"The first question was one of procedure. The pleading of the plaintiff alleged certain facts, the defendant's other facts. The plaintiff considered that the

facts alleged by the defendant entitled her to a judgment. When the case came on for hearing counsel elected to adopt the facts alleged in the defence and ask for the judgment that would have been appropriate if those facts had been alleged by her in her statement of claim and proved at the trial. I think that this can be done if it is done in the proper way. I think that the step should be taken as soon as possible after the defence has been delivered and there should be proper notice to the other side. There should be no question of surprise, and if the matter can be decided in this way a great deal of time and expense can be saved, in particular it is not necessary to have witnesses in attendance."

It would seem from these authorities that a plaintiff may rely on the pleadings of the defendant and the finding of the court thereon if this will help to supplement deficiencies in his own pleadings and the evidence called on his behalf in respect of the relief he has claimed, provided he does not take the defendant by surprise. I do not, however, think that these authorities can possibly be said to go so far as to license perjury on his part, or what may be well-nigh perjury, and then to enable him to rely on the defendant's version as against his own to support his claim. I am therefore inclined to agree with Mr. Mooney that a plaintiff's claim founded on evidence adduced by him which is wholly rejected should be dismissed. I have been sorely tempted to dismiss the claim accordingly but out of consideration for the plaintiff's unfortunate injury, and through a humanitarian rather than a Draconian approach to his problem, I have attempted to see if, on their own version, the defendants were negligent in any way.

It was contended by counsel for the plaintiff that, in the present case, the relief claimed is damages for negligence and that, if negligence is found by the court to be proved by the evidence adduced for the defendant, the plaintiff should succeed in his claim for relief based on such negligence.

I find, however, that on the facts of this case the plaintiff has not proved that he was a licensee on the defendants' land. In fact, in my view, he was no more than a mere trespasser thereon. Therefore, no negligence appears from even the defendants' version of the facts. I will elaborate on this at a later stage.

The law with regard to liability in tort to children is succinctly stated by the late Professor Winfield in the 7th edition of his work on Tort at page 300 as follows:—

"An occupier must take reasonable care to see that children, of whose presence he knows or ought to know or to anticipate and who are too young to appreciate the danger of some attractive object under his control and within his knowledge, are protected against injury from that danger either by warning which is intelligible to them or by some other means."

It is difficult to quarrel with this proposition.

There can be little doubt that shunting trains can be an attraction to children and, had the plaintiff been a licensee on the land occupied by

A the defendants, the case of *Gough v. National Coal Board* ⁽⁵⁾ could have been of some assistance to him. The head-note of this case reads as follows:—

B The defendants operated a colliery tramway which ran over their land through a mining village with houses on both sides. It was unfenced and unguarded, and unattended journeys of slow-moving trucks passed up and down the track at frequent intervals, being worked by an engine at the top of an incline. For many years the public had been tacitly permitted to cross the track, and children played near it, and sometimes rode on the trucks, though that practice was not tolerated by the defendants, who knew of it.

C The infant plaintiff, aged six-and-a-half years, rode on a truck and was severely injured while trying to jump off. He brought an action, by his father, alleging negligence against the defendants. At the hearing he admitted that he knew that he was not supposed to play on the trucks and that his father would punish him if he did so. The trial judge found that the infant was a licensee over the whole of the land. He held that the tramway was an allurement which the defendants were under a duty to protect; and that the infant's knowledge that he was doing wrong made no difference because he was too young to appreciate the real danger; and he gave judgment for the plaintiffs. On appeal by the defendants:—

Held, that the infant had a general licence to go on the track, and that that licence could not be limited in such a way as either (a) to make him a trespasser *ab initio* because he had gone on the track to play, or (b) to reduce him from a licensee to a trespasser the moment he climbed on to the truck, for the truck was an allure-
E ment, and the defendants were under a duty to take reasonable care to protect him as a licensee against an object on their land which they knew was both attractive and dangerous to a child of his age, who was doing exactly what they should have foreseen he would do. The infant's knowledge that he was disobeying his father's warning did not postulate in him either a complete or partial knowledge of the danger of what
F he was doing such as to change the character of the truck from a concealed to an obvious danger and thereby to absolve the defendants from their duty to guard it, and they were accordingly liable in damages."

Counsel for the plaintiff placed great reliance on this authority which he said was the strongest case in his favour. It should be noted, however, that in *Gough's* case the slow-moving truck in question was unguarded and unattended during the time when the infant plaintiff rode on it and sustained his injuries while trying to jump off it. Singleton L.J. in the course of his judgment at page 201 said:—

H "An examination of the authorities leads me to the conclusion that if an occupier allows children of tender years on his land, and if he has thereon something which is, to his knowledge attractive to them and which is dangerous, he must take reasonable care to protect them from the danger. Warning may be sufficient in some cases, though not in all. What is reasonable care depends on a number of circumstances, among which
I are: (1) the nature of the land and the position and nature of the dangerous object; (2) the knowledge of the occupier; and (3) the age of the children. Of these the last, perhaps, presents the most difficulty. A child may know that he ought not to do something. It does not follow that he appreciates the danger or likely consequence of his doing that which he ought not to do. The plaintiff was considered to be too young to be guilty of contributory negligence, and I do not think

that it ought to be held that he appreciated the danger of that which he did in the absence of any question directed to that point. The defendants might have forbidden the use of the track to persons generally or to children. They might have fenced the track, or they might have had someone on or about the lower part of the track, where there are houses, when the tramway was in motion. They did none of these things. There is evidence that on some occasions children were chased away. Whether that was sufficient in the circumstances is a question of fact."

In the case before me, although the tracks were unfenced, the wagons were in fact guarded and attended by the brakesman and the guard and not only did they warn the children and chase them away on the day in question but had, in fact, done so continuously over a period of several years before the accident. The defendants' servants had even gone to the extent of warning all residents in the neighbourhood not to allow their children on the tracks. Their warnings went unheeded. There is no evidence whatsoever that the defendants ever tolerated the presence of either adults or children on the tracks when the trains were in the area. Although there is some evidence, adduced on behalf of the plaintiff, to the effect that persons used a foot-path across the tracks as a short-cut from the flats to Alexandra Road, when no trains were there or when they were stationary, I am not satisfied that this was done openly and to the knowledge and with the permission of the defendants because evidence adduced on behalf of the defendants, which I prefer, is to the effect that people on the tracks when trains were there were warned not to use the foot-path. D.W.4 stated quite categorically that he warned persons, including adults, not to use the foot-path. He added, however, "I suppose when no trains are there trespassing takes place. Our warnings were ignored."

Some reliance was placed by counsel for the plaintiff on a statement appearing in Exh. D2 (a sketch plan) produced by the defence as follows:—

"Foot-path used as short-cut by residents of S.I.T. Flats to Alexandra Road".

In the light of the evidence of D.W.4 to which I have referred, I do not regard this as an admission that the defendants acquiesced in such use.

On the whole therefore I have come to the conclusion that the plaintiff has not discharged the onus on him of showing that he was a licensee of the defendants on the tracks.

It should be remembered that it is when a child is regarded as a licensee that any question can arise as to whether an object like a shunting train is an allurement or a trap. If the child however is not a licensee but a trespasser, he is little or no better off than an adult trespasser and the only duty owed to such a trespasser by an occupier is that the occupier must not deliberately injure him or act with reckless

A disregard of his presence (vide *Mourton v. Poulter* (6)).

B I have borne in mind that it is possible for trespassing children to acquire the status of licensees to whom an occupier owes a certain duty of care and protection in cases where an occupier habitually and knowingly acquiesces in their trespasses. But the evidence in the present case does not support any habitual and knowing acquiescence.

Complaint was made on behalf of the plaintiff that the failure to fence the area converted the plaintiff into a licensee.

C As Lord Dunedin said in *Addie & Sons Ltd. v. Dumbreck* (7) at page 372:—

D "There is no duty on a proprietor to fence his land against the world under sanction that, if he does not, those who come over it become licensees . . . When a proprietor protests and goes on protesting, turning away people when he meets them, as he did here, and giving no countenance in anything that he does to their presence there, then I think that no court has a right to say that permission must be implied."

E In all the circumstances of the present case, it seems to me abundantly clear that the plaintiff was a trespasser and that he is in no better position than the small boy in *Hardy v. Central London Railway Company*, (8) who was injured on a moving staircase at Liverpool Street Station. In that case, the evidence clearly showed that children were warned off whenever they were seen playing on the moving staircase and the plaintiff was considered to be a trespasser.

F In view of my finding that the plaintiff in the present case was a trespasser, it seems unnecessary for me to deal with the other ground of defence that the plaintiff's claim is barred by limitation.

G Further, even if it can be held that he was a licensee of some kind on the tracks at the time in question, this case can be distinguished from *Gough's* case because steps had been taken to warn all concerned of the dangers of the allurement in question in no uncertain manner.

H I appreciate that this is a question of fact. I have little doubt in my mind that the presence of children on the tracks was not only never countenanced but that positive and persistent steps were taken to protest against the same and to warn them off by persons in the employment of the defendants who chased them away with sticks. It further seems to me that the only way an accident of this kind could have been prevented was by bringing the train to a virtual standstill from the moment the boys were seen coming down to the tracks. In much the same way can it be said that the boys in *Hardy's* case should have been "protected" by bringing the moving staircase to a dead stop? In my view, on the facts, there was no necessity to take this

extreme step. It would have been an intolerable imposition to place on occupiers to require them to do so. Every word uttered by Lord Dunedin, cited earlier from *Addie's* case, applies with equal force to the facts of the present case.

The plaintiff's claim must therefore be dismissed with costs.

Claim dismissed.

Solicitors: *Braddell Bros.; J. Y. P. Chia & Co.*

PUBLIC PROSECUTOR v. OMAR LOPEZ

[A.Cr.J. (Williams J.) August 27, 1966]

[Kuching — Criminal Appeal No. K. 8 of 1966]

Criminal Law and Procedure — Submission of no case to answer — Test to be applied — Criminal Procedure Code (Sarawak Cap. 58), ss. 163 & 181.

At the close of the prosecution upon submission being made a magistrate must ask himself not whether he is satisfied that the prosecution has proved the case beyond reasonable doubt but whether there is evidence which if believed by reasonable men — it follows that it must be capable of such belief — would justify such men in convicting the accused of the offence charged. If he comes to the conclusion that there is no such evidence then he may acquit. If, however, he considers that such evidence does exist he should rule that there is a case to answer. It is then a matter for the accused, or his counsel, to decide what to do. He may say nothing and rest upon the submission, or he may make an unsworn statement, or give evidence on oath and call witnesses in the normal way. In any of the above events it will then fall to the magistrate to consider the total of the evidence that is then before him and applying the normal test that is applied in a criminal prosecution decide to his own satisfaction the guilt of the accused.

In this case the learned magistrate has applied the wrong test and the acquittal of the respondent cannot stand. Re-trial ordered.

Cases referred to:—

(1) *Practice Note* [1962] 1 All E.R. 448.

(2) *Woolmington v. Director of Public Prosecution* [1935] A.C. 462 & 480.

MAGISTRATE'S CRIMINAL APPEAL.

C. J. Millar (Deputy Public Prosecutor) for the appellant.

S. K. Reddi for the respondent.

Williams J.: This is an appeal by the public prosecutor against the acquittal of the respondent by the stipendiary magistrate at Kuching. The respondent stood charged with three offences under section 7(B) of the Anti-Corruption Ordinance, 1959. At the close of the case for the prosecution, Mr. Reddi, who appeared on behalf of the respondent, submitted that there was no case to answer, i.e. that the prosecution had failed to establish a *prima facie* case. The learned magistrate after an adjournment to consider the evidence gave a long and

somewhat involved ruling. In giving this ruling he applied his mind to the test that the prosecution must pause at this particular stage of a criminal case. No precise terminology was used by the learned magistrate but from reading his ruling as a whole I think it quite clear that what he meant was that it is necessary for the prosecution to have satisfied the trial magistrate that at that stage it has proved the guilt of the respondent beyond reasonable doubt.

In the course of the appeal, Mr. Millar, who appeared for the public prosecutor, argued that the test applied was incorrect. He said that the true test was of the nature laid down by Lord Parker C.J. in the *Practice Note*.⁽¹⁾ Mr. Reddi pointed to authority in Malaya which supported the attitude taken by the learned magistrate in this instance. There is indeed a considerable body of case law on this particular topic but I think the answer must lie in the specific language of the relevant Code, in this case the Criminal Procedure Code, Cap. 58 of the Laws of Sarawak. The relevant section of that Code is section 163 which reads as follows:—

"If upon taking all the evidence referred to in section 162 and asking such question, if any of the accused under section 201 as the court considers necessary it finds that no evidence has been adduced which, if believed would warrant his conviction, the court, may, subject to the provisions of section 171, record an order of acquittal."

I think it appropriate to mention here that section 163 took its present form by an amendment made in 1962. Prior to that time it had followed the provisions of section 253 of the Indian Criminal Procedure Code more closely even to the extent of incorporating the formidable word "rebutted". It is too perhaps worth remembering that the section in the Indian Code was pertinent only to the trial of "warrant cases" by magistrates wherein a procedure very different from that known in Sarawak was followed; and here, if I may add, I think much of the difficulty lies, especially that of reading section 164 with section 163 of the Sarawak Criminal Procedure Code. I would further note that the Indian Code provided a very different test where there was a trial with assessors, see section 289(2) of that Code. Be that as it may section 163 as it now stands clearly brings the law in Sarawak much more into line with that set out in the "Practice Note" referred to above.

I think however that the position becomes much clearer as to what is meant by 'no case to answer' when one looks at a trial which involves the use of a jury. For a judge at the close of the case for the prosecution in such instance to say that the prosecution has proved the guilt of the accused beyond reasonable doubt would be tantamount to his being enabled to say that the jury must in law find the person